

Constitutional Protections Still Safeguard Aliens in the U.S. Immigration Process

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Fret not, international community—we are still a nation of laws, despite what you may hear.

From reading “analyses” issued by many of our press outlets and hearing quotes from more than a few of our elected representatives, international observers may conclude “immigration enforcement” in the United States under Donald Trump *redux* involves “disappearing”¹ innocent passerby, chosen strictly on the basis of “racial profiling”², off the streets. Fret not: the constitution is alive and well in this nation of laws, though it is important to note that the protections it accords aliens depend on where they are encountered, how they are encountered, and whether and how they were admitted.

The Due Process Clause of the Fifth Amendment

Of all the clauses in the U.S. Constitution, “due process” is the only one to appear twice: in the Fifth Amendment³ (adopted just after the founding to curb federal government abuses) and again in the 14th Amendment⁴, a post-Civil War initiative that applies each of the constitutional amendments to the States.

But the latter amendment, which provides that “no person shall be ... deprived of life, liberty, or property, without due process of law”, solely controls in the immigration context, because “immigration” is a uniquely federal responsibility.

Note that the founders didn’t just mandate that “process” be required before “life, liberty, or property” could be deprived, but rather that the process required what was “due” in the situation — an important modifier that expands and contracts the right.

That is why in 2001, the Supreme Court held⁵, “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent”, but also concluded “the nature of that protection may vary depending upon status and circumstance”.

How the Fifth Amendment Due Process Clause applies to aliens has been developed through precedent, with the High Court holding at various times⁶ that: “aliens receive constitutional protections when they have come within the territory of the United States and *developed substantial connections with this country*”; “once an alien gains admission to our country and *begins to develop the ties that go with permanent residence* his constitutional status changes accordingly”; and “[t]he alien, to whom the United States has been traditionally hospitable, has been accorded a *generous and ascending scale of rights* as he increases his identity with our society” (emphasis added).

The Inspection and Admission of Aliens

For more than 130 years⁷, courts have held that aliens’ due process rights are at their nadir when they are seeking initial entry, and prior to 1996, the focus in the Immigration and Nationality Act (INA) in applying that principle centered on whether aliens – both at the border and the ports – had physically “entered” the United States, free from official constraint.

As a conference report for what became the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA) explained⁸, Congress wanted to shift the primary focus in the INA from physical “entries” of aliens to their lawful “admissions” because under the then-controlling “entry doctrine”:

Illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry. Hence, the pivotal factor in determining an alien’s status will be whether or not the alien has been lawfully admitted.

To even the playing field, Congress amended section 235(a)(1)¹⁰ of the INA to describe both aliens seeking admission at the ports and those who entered illegally as “applicants for admission”, defining the term “admission” at section 101(a)(13)(A)¹¹ of the INA as: “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer”.

The Warrant Rule, and Exceptions

The Fifth Amendment right to due process isn’t the only constitutional guarantee aliens enjoy.

Protections under the Fourth Amendment¹² of the constitution against “unreasonable searches and seizures” have also been found to apply in the immigration context, and rules governing those protections have been developed through statute, implementing regulations, and case law.

The “warrant rule” in section 236(a)¹³ of the INA requires DHS to obtain an administrative (not judicial¹⁴) warrant before it can arrest an alien, but that rule does not apply to alien applicants for admission at the ports, who voluntarily subject themselves to CBP encounter and questioning.

Nor does it generally apply to aliens who cross the border illegally, because Border Patrol agents can’t identify—and thus can’t obtain warrants for—such aliens.

To address such cases, section 287(a)(2)¹⁵ of the INA permits immigration officers to arrest aliens “entering or attempting to enter the United States in violation of any law” without a warrant, and section 287(a)(3) allows them to “board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle” within “a reasonable distance” (defined by regulation¹⁶ as 100 miles) of our borders without one, as well.

Similarly, section 287(a)(1) of the INA permits immigration officers in the interior of the United States (usually ICE) “to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States” without a warrant, and section 287(a)(2) provides for warrantless arrests of “any alien in the United States if” immigration officers have “reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest”.

That said, section 287(a)(2) also requires immigration officers to take any alien they arrested without a warrant “without unnecessary delay for examination before an officer. . . having authority to examine aliens as to their right to enter or remain in the United States”.

Regulatory “Standards for Enforcement Activities” at 8 C.F.R. § 287.8¹⁷ implement these authorities, and subsection (b) therein guides the warrantless pre-arrest interrogation process:

*(1) Interrogation is questioning designed to elicit specific information. An immigration officer, like any other person, **has the right to ask questions of anyone as long as the immigration officer does not restrain the freedom of an individual, not under arrest, to walk away.***

*(2) If the immigration officer **has a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States,** the immigration officer may briefly detain the person for questioning.*

(3) Information obtained from this questioning may provide the basis for a subsequent arrest, which must be effected only by a designated immigration officer . . . [Emphasis added.]

Mirroring the language in section 287(a)(2) of the INA, 8 C.F.R. § 287.8(c)(2)(i) states that warrantless immigration arrests resulting from an interrogation or stop “shall be made only when the designated

immigration officer has reason to believe that the person to be arrested. . . is an alien illegally in the United States”.

Reviewing courts have concluded¹⁸ that “reason to believe” in that context is equivalent to the “probable cause” standard, that governs criminal arrests in the United States.

In its 1983 opinion in *Illinois v. Gates*¹⁹, the Supreme Court in turn, found that probable cause “is a fluid concept -- turning on the assessment of probabilities in particular factual contexts -- not readily, or even usefully, reduced to a neat set of legal rules”, but regardless one focused on the “factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act”.

Aliens Encountered by CBP at the Border and the Ports

If applicants for admission – again, at the ports *or* the borders— lack proper admission documents or are seeking admission through fraud, section 235(a)(1) permits CBP to subject them to “expedited removal”, under which they can be deported without a hearing before an immigration judge (IJ).

When, however, aliens subject to expedited removal claim a fear of persecution or torture if returned, immigration officers must by statute refer them to USCIS asylum officers (AOs) to determine whether they have a “credible fear of persecution”.

“Credible fear” is a screening standard, defined in section 235(b)(1)(B)(v) of the INA as “a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum”.

When an AO makes a “positive credible fear determination”, the alien is placed into removal proceedings under section 240²⁰ of the INA to apply for asylum and other “relief” from removal.

If an AO makes a “negative credible fear determination”, the alien can ask an IJ to review that decision.

If the IJ affirms the AO, the alien is returned to DHS for removal, but if the IJ reverses the AO’s negative credible fear determination, the alien will be placed into removal proceedings.

Aliens can’t challenge negative credible fear determinations in federal Article III²¹ courts, but under section 242(e)(2)²² of the INA, aliens subject to expedited removal can seek habeas review if they claim they: (1) are U.S. citizens; (2) weren’t subject to expedited removal; and (3) have lawful permanent resident status (“green cards”) or have been admitted as asylees or refugees.

Those limitations on judicial review stem from longstanding Supreme Court precedent²³ holding that aliens at the ports of entry have only those due process rights Congress has provided them by statute, which the Court in 2020²⁴ concluded also applied to aliens detained shortly after an illegal entry.

Expedited removal aside, section 235(b)(2) of the INA requires immigration officers to place any “alien seeking admission” who “is not clearly and beyond a doubt entitled to be admitted” under the grounds of inadmissibility in section 212(a) of the INA into immigration court section 240 removal proceedings.

That includes aliens whom CBP could have subjected to expedited removal but didn’t, at its discretion.

Deportability of Lawfully Admitted Aliens

Congress has also directed DHS to deport lawfully admitted aliens (including green card holders) if they fall within any of the grounds of deportability in section 237(a)²⁵.

The grounds most charged are sections 237(a)(1) (inadmissible at time of admission or nonimmigrant overstay); (a)(2) (criminal grounds, including convictions for drug and gun crimes and aggravated felonies); (a)(3) (fraud); (a)(4) (“security and related grounds”); and (a)(5) (“public charge”).

Up to the point they naturalize, even green card holders can be charged with removability if they fall within any of those grounds.

Removal Proceedings under Section 240 of the INA

Section 240 of the INA, as amended by IIRIRA, funnels aliens subject to expedited removal who receive positive credible fear determinations, other aliens charged with inadmissibility under section 212(a), and aliens charged with deportability under section 237(a) of the INA into a singular adjudicatory process, “removal proceedings”, before IJs.

Removal proceedings commence when DHS files a Notice to Appear (NTA)²⁶ with the immigration court.

An NTA is the charging document in removal proceedings, and under section 239²⁷ of the INA, it must include the factual bases of the charge(s) and the ground(s) of inadmissibility or deportability, as well as the date, place, and time of the first removal hearing (known as the “initial master calendar”).

The government is represented in removal proceedings by attorneys from ICE’s Office of the Principal Legal Advisor (OPLA)²⁸, while under section 292 of the INA, aliens (“respondents” in removal proceedings) “have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as [they] shall choose.”

By regulation, 8 C.F.R. § 1240.10(a)²⁹, the IJ must begin those proceedings by informing respondents of their right to counsel and the availability of pro bono lawyers, their right to present and object to evidence, and their appeal rights.

Respondents are given the opportunity to then find counsel, and thereafter – either through counsel or pro se – must plead to the allegations of removability or inadmissibility in the NTA.

Under section 240(c)(2) of the INA, applicants for admission charged with inadmissibility bear the burden of showing “clearly and beyond doubt” they are “entitled to be admitted” and are “not inadmissible under” any of the grounds of inadmissibility in section 212(a) of the INA.

Conversely, ICE bears “the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable” under the specific section 237(a) ground or grounds of deportability in the NTA.

Most respondents—and nearly all those charged with illegal entry—concede both the allegations in the NTA and removability to move to the next stage of those removal proceedings, applying for a protection, benefit, or waiver (collectively: “relief”) that, if granted, would allow them to remain here.

Under section 240(c)(4) of the INA, applicants bear the burden of proving they are statutorily eligible for such relief, and with respect to discretionary forms of relief like asylum (under section 208 of the INA) or cancellation of removal (under section 240A), that they merit such relief in the exercise of discretion.

Unless their presence is waived, respondents must appear at their removal hearings, and if they don’t, section 240(b)(5) of the INA requires IJs to order them removed *in absentia*, provided ICE proves “by clear, unequivocal, and convincing evidence” both that the alien was provided “written notice” of the date, time, and place of the hearing “and that the alien is removable”.

By regulation at 8 C.F.R. § 1003.38(a)³⁰, both ICE and the respondent can appeal IJs' decisions on removability or eligibility for relief to the Board of Immigration Appeals (BIA)³¹, which like the immigration court is an administrative tribunal within DOJ's Executive Office for Immigration Review (EOIR)³².

Appeals must be filed with the BIA within 30 days of the issuance of the IJ's decision and can include briefs laying out any arguments on appeal.

“Asylum Only” and “Withholding Only” Proceedings

Nonimmigrants admitted under the Visa Waiver Program (VWP) in section 217 of the INA, stowaways found by AOs to have a credible fear, crewmembers in D visa³³ status who express a fear of return, cooperating witnesses and informants (S visa³⁴ applicants), and aliens inadmissible under section 235(c) of the INA on “security and related grounds” do not receive removal hearings, but can make applications for asylum and related protections in “asylum only” proceedings before IJs under 8 C.F.R. § 1208.2(c)(1)³⁵.

Similarly, previously deported aliens whose final orders are reinstated under section 241(a)(5) of the INA after illegal reentry and aliens convicted of aggravated felonies with administrative removal orders under section 238 of the INA can't contest removability or seek asylum, but can ask IJs for withholding of removal under section 241(b)(3) of the INA (statutory withholding)³⁶ and protection (withholding or deferral) under Article III of the Convention Against Torture (CAT)³⁷.

Those classes of aliens may seek such protection in immigration court “withholding only” proceedings under 8 C.F.R. § 1208.2(c)(2).

The rules governing the right to counsel, to offer and object to evidence, and to appeal adverse decisions also apply in “asylum only” and “withholding only” proceedings. But as the regulations state: “During such proceedings, all parties are prohibited from raising or considering any other issues, including but not limited to issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief.”

Circuit Court Appeals

Only aliens can seek federal court review of administrative immigration orders in removal, asylum only, and withholding only proceedings, and can do so by filing petitions for review with the U.S. Court of Appeals for the judicial circuit in which the IJ completed proceedings, pursuant to section 242 of the INA.

Aside from asylum, however, those circuit courts lack jurisdiction over discretionary forms of relief, and also cannot consider appeals of removal orders from aliens convicted of certain criminal offenses.

Moreover, pursuant to section 242(b)(4) of the INA, IJ and BIA “findings of fact are conclusive” during circuit court review unless any reasonable adjudicator would be compelled to conclude to the contrary”, while inadmissibility determinations are “conclusive unless manifestly contrary to law”, and denials of asylum in the exercise of discretion are “conclusive unless manifestly contrary to the law and an abuse of discretion”.

That said, even in cases involving criminal aliens and other denials of discretionary relief, circuit courts retain authority to review constitutional claims and questions of law.

Finally, the so-called “zipper clause”³⁸ in section 242(g) of the INA bars district courts' “jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien”.

Immigration Detention During Proceedings

District courts, however, do retain³⁹ habeas jurisdiction over certain DHS detention decisions, however.

That said, the INA provides the department with broad detention authority, and in many instances, requires DHS to detain aliens in removal proceedings and pending removal from the United States.

As noted above, section 236(a) of the INA allows immigration officers to arrest aliens with administrative warrants, but it also allows DHS to either detain those aliens or to release them on a “bond of at least \$1,500” or on “conditional parole”⁴⁰.

The regulation governing IJ custody redeterminations, 8 C.F.R. § 1003.19⁴¹, permits aliens arrested by immigration officers, both on warrant under section 236(a) and without a warrant under section 287(a)(2), to seek release on bond from the immigration court, and if release is denied or the amount of bond set by the IJ is too steep, from the BIA.

Those “bond proceedings” are separate from removal proceedings, and precedent⁴² makes clear that neither section 236(a) nor the regulations give respondents a “right” to release on bond.

To show they are eligible⁴³ for release, respondents “must establish to the satisfaction of” the IJ and BIA that they don’t “present a danger to persons or property”, aren’t “a threat to the national security”, and don’t “pose a risk of flight.”

Section 236(c), however, bars both DHS and IJs from releasing the following classes of detainees: aliens inadmissible under the criminal grounds in section 212(a)(2) of the INA; aliens deportable under many of the criminal grounds in section 237(a)(2) of the INA; aliens removable on the national security grounds of inadmissibility and deportability; and aliens who haven’t been admitted and who have been changed with or convicted of “burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person”.

Moreover, because section 235(b)(1) of the INA mandates the detention of aliens subject to expedited removal (even after they are placed in section 240 removal proceedings), and section 235(b)(2) requires DHS to detain applicants for admission placed directly into removal proceedings, the BIA recently held⁴⁴ all applicants for admission charged with inadmissibility—even those who evaded apprehension and were first encountered by ICE in the interior—are ineligible for release during proceedings.

That said, section 212(d)(5)(A) of the INA provides the DHS secretary with limited authority to release inadmissible applicants for admission on “parole”, a status different from conditional parole under section 236(a) of the INA.

As section 212(d)(5)(A) explains, however, DHS may parole aliens seeking admission “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit”, and further provides: (1) that “such parole of such alien shall not be regarded as an admission of the alien”; and (2) that “when the purposes of such parole shall” in DHS’s opinion “have been served the alien shall . . . return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States”.

Notwithstanding the limited nature of the parole authority, DHS under the Biden administration utilized it to wave nearly [2.9 million](#) inadmissible applicants for admission into the country, by my calculations.

To prevent such abuses, and to prevent the release of criminal aliens and reassert its plenary authority over immigration, Congress in January passed the “Laken Riley Act”⁴⁵.

That act amended the INA to empower state attorneys general to sue the executive branch for alien releases in violation of section 236(c) of the INA and for parole releases that exceed the authority in section 212(d)(5)(A) of the INA.

Special Rules Governing the Detention of Alien Children

Congress and the courts, however, have crafted special rules to govern the detention and release of alien minors, and so-called “unaccompanied alien children” (UACs) in particular.

Most notable is section 235 of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)⁴⁶, which governs the detention and release of UACs, and which added a new provision, 8 U.S.C. § 1232, to the INA.

That provision splits UACs into two separate groups: children from “contiguous” countries (Canada and Mexico); and those from “non-contiguous” countries (everywhere else).

Under that provision, DHS can return any contiguous UACs they encounter if they haven’t been trafficked and don’t have a credible fear of return.

UACs from non-contiguous countries, however, must be transferred to the care and custody of the Office of Refugee Resettlement (ORR), a component of the Department of Health and Human Services, within 72 hours and placed into formal removal proceedings (UACs are not amenable to expedited removal), even if they haven’t been trafficked and have no fear of return.

ORR shelters those children while attempting to place most of them with “sponsors” in the United States—usually the child’s parent or guardian, but not always. As I have recently explained⁴⁷, that placement process has been fraught with difficulties, and has resulted in harm to and abuses of too many released children.

In addition, lower court decisions⁴⁸ (mis)interpreting the 1997 *Flores v. Reno* settlement agreement (FSA)⁴⁹—which originally only pertained to alien minors without parents or guardians -- require DHS to release alien children who have entered illegally with their parents or guardians in family units (FMUs) within 20 days of encounter.

To avoid allegations of “family separation”, DHS generally releases the adults in FMUs with their children within that 20-day timeframe.

Immigration Detention Pending Removal

Finally, section 241(a)(1)(A) of the INA directs DHS to remove aliens under final orders of removal within 90 days (the “removal period”), and section 241(a)(2)(A) requires the department to detain those aliens throughout that removal period.

Most aliens under final removal orders aren’t, in fact, detained, but section 241(a)(2)(A) continues, barring DHS from releasing aliens ordered removed on criminal and national security grounds, while section 241(a)(2)(B), also added by the Laken Riley Act, gives state attorneys general standing to sue to enforce that detention mandate.

DHS must obtain travel documents and permission from countries of removal before deporting aliens, however, and certain countries, termed “recalcitrant”⁵⁰, will either refuse or facilitate returns of their nationals or slow-walk that process.

Consequently, section 241(a)(6) of the INA, permits continued detention beyond the removal period for inadmissible aliens, nonimmigrants ordered removed for violating the terms of their admissions, and aliens ordered removed under the criminal and national-security grounds of deportability, if DHS determines them “to be a risk to the community or unlikely to comply with the order of removal”.

In its 2001 opinion in *Zadvydas v. Davis*⁵¹, however, the Supreme Court held that aliens under removal orders could not be detained indefinitely, but rather only so long as deportation is “reasonably foreseeable” (generally not more than six months), finding that further detention raised “serious constitutional concerns”.

“In short”, as the nonpartisan Congress Research Service has explained⁵², “while DHS generally has broad authority over the detention of aliens, that authority is not without limitation.”

Back to the Constitution

Regardless of what international observers may hear, DHS isn’t “disappearing” anyone. The constitution continues to safeguard the rights of “aliens, whether their presence here is lawful, unlawful, temporary, or permanent”, though Fifth Amendment Due Process protections “may vary depending upon” an individual alien’s “status and circumstance”. The laws are the laws, and this remains a nation of them.

¹ Emily Witt, “The People Being Disappeared by ICE in Los Angeles”, *The New Yorker*, June 22, 2025, <https://www.newyorker.com/news/letter-from-los-angeles/the-people-being-disappeared-by-ice-in-los-angeles>.

² Charlie Savage, “The Supreme Court Decision on ICE and Racial Profiling, Explained”, *The New York Times*, September 08, 2025, <https://www.nytimes.com/2025/09/08/us/politics/supreme-court-immigration-racial-profiling.html>.

³ Cherise Halsall, “Van Hollen: 'I am not defending the man, I am defending the rights of this man to due process'”, ABC News, April 20, 2025, <https://abcnews.go.com/Politics/van-hollen-defending-man-defending-rights-man-due/story?id=120978764>.

⁴ U.S. Const. amend. XIV, <https://constitution.congress.gov/constitution/amendment-14/>.

⁵ *Zadvydas v. Davis*, 533 U.S. 678 (2001), <https://supreme.justia.com/cases/federal/us/533/678/>.

⁶ ArtI.S8.C18.8.7.2 Aliens in the United States, Constitution Annotated, https://constitution.congress.gov/browse/essay/artI-S8-C18-8-7-2/ALDE_00001262/.

⁷ *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892), <https://supreme.justia.com/cases/federal/us/142/651/#top>.

⁸ Malloy, Robert, “The Illegal Immigration Reform and Immigrant Responsibility Act of 1996”, *Immigration Review* no. 27, Fall/Winter, pp. 18-19, <https://cis.org/sites/cis.org/files/articles/1996/IR27/IR27.pdf>.

⁹ 533 U. S. 678 (2001), <https://tile.loc.gov/storage-services/service/ll/usrep/usrep533/usrep533678/usrep533678.pdf>.

¹⁰ <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

¹¹ <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

¹² U.S. Const. amend. IV, <https://constitution.congress.gov/constitution/amendment-4/>.

¹³ <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1226&num=0&edition=prelim>.

¹⁴ Andrew R. Arthur, “Immigration Judicial Warrants Don’t Exist”, CIS, September 17, 2019, <https://cis.org/Arthur/Immigration-Judicial-Warrants-Dont-Exist>.

¹⁵ <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1357&num=0&edition=prelim>.

¹⁶ 8 CFR § 287.1 – Definitions, <https://www.law.cornell.edu/cfr/text/8/287.1>.

¹⁷ 8 CFR 287.8, [https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-287/section-287.8#p-287.8\(b\)\(1\)](https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-287/section-287.8#p-287.8(b)(1)).

¹⁸ *Morales v. Chadbourne*, No. 14-1425 (1st Cir. 2015), <https://media.ca1.uscourts.gov/pdf/opinions/14-1425P-01A.pdf#page=15>.

¹⁹ *Illinois v. Gates*, 462 U.S. 213 (1983), <https://supreme.justia.com/cases/federal/us/462/213/>.

²⁰ <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>.

²¹ U.S. Const. art. III., <https://constitution.congress.gov/constitution/article-3/>.

²² <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1252&num=0&edition=prelim>.

²³ *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892), <https://supreme.justia.com/cases/federal/us/142/651/#top>.

- ²⁴ *Department of Homeland Security v. Thuraissigiam*, 591 U.S. ____ (2020), https://www.supremecourt.gov/opinions/19pdf/19-161_g314.pdf.
- ²⁵ <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.
- ²⁶ U.S. Immigration and Customs Enforcement, https://www.ice.gov/doclib/detention/checkin/NTA_I_862.pdf.
- ²⁷ <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229&num=0&edition=prelim>.
- ²⁸ “Office of the Principal Legal Advisor”, ICE, <https://www.ice.gov/about-ice/opla>.
- ²⁹ <https://www.ecfr.gov/current/title-8/chapter-V/subchapter-B/part-1240>.
- ³⁰ 8 CFR § 1003.38 – Appeals, <https://www.law.cornell.edu/cfr/text/8/1003.38>.
- ³¹ “Board of Immigration Appeals”, EOIR, <https://www.justice.gov/eoir/board-of-immigration-appeals>.
- ³² “About the Office”, EOIR, <https://www.justice.gov/eoir/about-office>.
- ³³ “Crewmember visa”, U.S. Department of State, <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/crewmember-visa.html>.
- ³⁴ CRM 1500-1999, 1862. S Visa Program – Eligibility, <https://www.justice.gov/archives/jm/criminal-resource-manual-1862-s-visa-program-eligibility>.
- ³⁵ 8 CFR § 1208.2 – Jurisdiction, <https://www.law.cornell.edu/cfr/text/8/1208.2>.
- ³⁶ Andrew R. Arthur, “DHS/DOJ: Raise Credible Fear Standard for Statutory Withholding and CAT”, CIS, June 25, 2020, <https://cis.org/Arthur/DHSDOJ-Raise-Credible-Fear-Standard-Statutory-Withholding-and-CAT>.
- ³⁷ 8 CFR § 208.18 - Implementation of the Convention Against Torture, <https://www.law.cornell.edu/cfr/text/8/208.18>.
- ³⁸ *Reno v. ADC*, 525 U.S. 471 (1999), https://scholar.google.com/scholar_case?case=3003744767216433663&hl=en&as_sdt=6,34&as_vis=1.
- ³⁹ National Immigration Litigation, “Practice Advisory, HABEAS CORPUS PETITIONS”, January 15, 2025, <https://immigrationlitigation.org/wp-content/uploads/2025/04/25.01.15-Habeas-FINALx.pdf>.
- ⁴⁰ Immigrant Legal Resource Center, “Parole in Immigration Law”, October 2016, https://www.ilrc.org/sites/default/files/sample-pdf/parole-1st_ed-2016-ch_01.pdf.
- ⁴¹ 8 CFR § 1003.19 - Custody/bond, <https://www.law.cornell.edu/cfr/text/8/1003.19>.
- ⁴² 23 I&N Dec. 572 (A.G. 2003), <https://innovationlawlab.org/wp-content/uploads/2014/12/Matter-of-D-J-.pdf>.
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